

9 FAM 40.93 INTERPRETIVE NOTES

(TL:VISA-442; 07-31-2002)

9 FAM 40.93 N1 INELIGIBILITY UNDER INA 212(A)(9)(C)

(TL:VISA-442; 07-31-2002)

This provision applies only to aliens who, having previously been unlawfully present for more than a year (in the aggregate) or having been previously removed, enter or try to enter the United States illegally. Consular officers should note that the first of these triggers, attempted unlawful re-entry after a year's unlawful presence, applies only with respect to unlawful presence after April 1, 1997. The second, a prior removal, applies without regard to when such removal occurred. Although the second trigger may apply regardless of when the removal occurred, the provision would only apply if the illegal re-entry and/or attempted re-entry occurred on or after April 1, 1997, the date this visa ineligibility went into effect.

9 FAM 40.93 N2 NONIMMIGRANT CASES

(TL:VISA-442; 07-31-2002)

Consular officers should be guided primarily by CLASS records with respect to this provision in most nonimmigrant cases. However, when the passport or other materials submitted in support of an application suggest the likelihood that an applicant might be ineligible under this ground but the alien is not included in CLASS, consular officers should interview in depth to ascertain whether this ineligibility applies to this alien. Consular officers should not, however, routinely call in nonimmigrant applicants for this purpose.

9 FAM 40.93 N3 EFFECT OF INA 212(A)(9)(C) INELIGIBILITY

(TL:VISA-442; 07-31-2002)

An alien subject to INA 212(a)(9)(C) is permanently inadmissible and ineligible for a visa. Such an alien may, however, after ten years seek the Attorney General's permission to reapply for admission. If granted, that ineligibility for a visa would be overcome.